1941.

File No. O. Guret. Talukdars/41,

Legal DEPARTMENT

A BRANCH

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Subject:—

Opinion under the

P-21 Gujerat Talukdars Act.

File No. O. Gujerat Talukdars/41

Std. Sectt. Slip 24 B e.

259-f

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Office of the R.L.A.

The Hon. the Resident for the States of Western India semms to doubt the correctness of ~~kk~~ the R.L.A.'s opinion No. 170- Confl. dated the 8th July 1955, in view of the Bhavnagar darbar's contention that there was no unauthorized alienation on the part of the Girassias as they were mere trespassers and they consented by the award decree to give up their wrongful possession. The Hon. the Resident seems to have based the remarks of the contention of the Darbar raised in para.22 of the memorial. Sub-paragraph (1) of paragraph 22 of the memorial states:-

" that the consent decree merely confirms what was in fact in possession of the Darbar in 1865 and grants ~~k~~ no excess land to the Darbar and therefore no question of unauthorized alienation arises."

The Revenue Department is requested to ask the Commissioner to offer his remarks on this contention of the Darbar also and to report about the title of the Girassias to the land prior to the award decree.

Sd/-
Remembrancer of Legal Affairs,

U.R. to R.D. NO. 176-Confl., dated the 5th April 1941.

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In his letter at page 1 ante the Collector of Ahmadabad states that there are many talukdari lands in possession of mortgagees from before the passing of the Gujarat Talukdars Act, 1888, and the mortgages, being more than 60 years old, are unredeemable by the mortgagors. The questions raised for consideration of the R.L.A. are :-

(1) whether in view of the R.L.A.'s opinion No. 880 dated the 20th April 1928 in the case known as Godhavi case, the full assessment can be levied on these lands;

(2) whether such levy can be ma de with retrospective effect i.e. for 60 years from the date the Talukdar lost possession; and

(3) whether these lands can be entered as khalsa in Government records.

2. Under the former Governments, talukdars had to pay tribute. Under the British rule they had and have to pay land revenue to Government. Every talukdar's estate is held subject to the payment of jama i.e. land revenue (see the definition of "Jama" in section 2(e) of the Gujarat Talukdars Act). The question of Jama payable by a talukdar to Government in respect of his estate or portion thereof has to be ascertained.

(1) by the terms of an ag reement, if any, entered into by or with a talukdar and still in force as to the amount of the jama, or

(2). by the terms of any settlement of the amount of jama made by or on under the orders of Government for a certai term of years and still in force.

(3) But if the estate or any portion thereof is not wholly of partially exempt from land revenue and its liability to payment of a land revenue is not subject to special conditions or restrictions, the jama pay able to Government in re pect of such estate or portion thereof shall, if a survey settle ment has been extended thereto, be the aggregate of the survey assessment of lands composing such estate or such portion thereo

minus such deduction, if any, as Government shall in each case direct. Government may declare the amount of jama so ascertained fixed for any term not exceeding thirty years (see section 22 of the Act and Dandekar's land tenures pp.377,378).

3. The question whether the lands alienated prior to the passing of the Gujarat Talukdars Act can be subjected to the levy of full assessment instead of jama has been considered by the R.L.A. more than once. In his opinion No.285, dated the 2th January 1928 the R.L.A. (Mr. Balak Ram) stated; "It (the land) cannot, therefore, be entered in the Government record or Khalsa..... This circumstances however, does not bar the right of Government to levy jama equal to full assessment at the expiration of the settlement which was in force. Section 22 or the Gujarat Talukdars Act is wide enough to empower Government to levy the jama on the portion alienated up to the maximum or the aggregate of the survey assessments. Deductions to be made are entirely at the discretion of Government and they may choose not to grant them in respect of the particular portions alienated", see also R.L.A.'s opinion Ni. 880 dated the 20th April 1928. In his opinion No. 291, dated the 17th June 1929 the R.L.A. (Mr.Allison) opined: "The intention of inserting conditions under section 31(2) is merely to secure the payment of land Revenue equal to jama during the currency of the existing settlement; and after that the land revenue is to be charged at the full rate. It is definitely laid down in I.L.R. 43 Bom. page 13 that a Talukdar cannot by alienation or otherwise impair the right of Government to levy full assessment under section 45 of the land Revenue Code." This opinion of the R.L.A. was concurred in by the Advocate General in his opinion No.64, dated the 5th October 1929. It is clear from these opinions that it would be competent for Government to levy full assessment on the alienated talukdari lands. Such levy cannot however be made during the currency of the existing settlement, but after the expiry thereof. Such levy cannot also be made with retrospective effect i.e. for the last 60 years

or from the date of possession of the lands by the Talukdar. Government will therefore have to wait till the expiry of the present settlement in order to levy full assessment on the alienated talukdari lands.

4. The question whether these lands can be treated as Khalsa does not appear to be free from doubt. It is true that in his opinion No.880 dated the 20th April 1928, in the Godhavi case, the R.L.A. (Mr.Allison) opined "As there is no possibility of the land being reclaimed as Talukdari estates it may be removed from the list of the Talukdari estates and entered as Khalsa in Government records". The correctness of this opinion seems to have been considerably shaken by his (Mr.Allison's) subsequent opinion. In his opinion No. 285 dated the 20th January 1928, the R.L.A.(Mr.Bala Ram) opined; "Although the alienee cannot arrogate to himself the status of a talukdar in consequence of being the owner of the alienated talukdari land, the land ramains an integral part of the parent talukdari estate. It cannot therefore be entered in Government record as Khalsa and will have to be recorded as Darbari as was done in the Kotda case decided by Mr. Brown". In his opinion No.291 dated the 17th June 1929 the R.L.A.(Mr. Allison) agreed that Mr. Balak Ram's opinion with the omission of the words "integral" and"parant" was correct. He further observed : "The distinction between "Talukdar's Act itself is emphasised in various rulings of the Bombay High Court, the effect of which is to define a talukdar's estate as an estate of talukdari tenure held by a talukdar; or as a talukdar's interest in a talukdari estate held by him by reason of his status as a talukdar(vide 4 B.L R. 817; 9 B.L.R. 1122; 11B.L.R. 736; I.L.R. 35 Bom.97). In the last of those decisions it is clearly stated that an alienee from a talukdar still holds the land as a talukdari estate or an estate on a talukdari tenure. Further such an alienee does not become a talukdar within the meaning of the

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Act (4 B.L.R.550). One of the contingent attributes of such land is that it may revert to the talukdar by purchase or escheat or otherwise. In which case it at once becomes liable to the reduced jama only: and incidently again becomes talukdar's estate". In his opinion No.64 dated the 5th October 1929 the Advocate General agreed with Mr. Allison's opinion No. 291 dated the 17th June 1929 and further observed : "A talukdar's estate is the interest of talukdar in a talukdari estate held by him by reason of his status as a talukdar. An alienee from a talukdar holds the land on a talukdari tenure. But he does not become a talukdar within the meaning of the Act. Land forming part of a talukdar's estate which is alienated with the permission of Government under section 31 of the Gujarat Talu dar's Act remains a part of the Talukdari estate". It is clear from these opinions and the Bombay High Court decisions that a land alienated by a talukdar does not by reason of such alienatio cease to be a part of a talukdari estate. Consequently such land cannot be entered as Khalsa in Government records. ~~[illegible]~~ It is ~~[illegible]~~ true in all the opinions and the High Court decisions referred to above the question related to talukdari lands alienated subsequent to the date of the passing of the Gujarat Talukdar's Act. But this fact does not however appear to make any difference. ~~[illegible]~~ The same principle would apply to lands alienated prior to the passing of the Act. Consequently talukdari lands even though alienated before the passing of the Gujrat Talukdars Act cannot be made "Khalsa" and entered as such in Government recirds.

Sd/-
Remembrancer of legal affairs.

U.R. to R.D.No. 3392 dated the 18th April 1941.

S-C

R. I.No. 5136, dated 7-6-41.

Submitted.

2. The Collector and Talukdari Settlement Officer, Ahmadabad, has requested Government to supply him with a copy of Government Order No. 423, dated 10-2-20 as it is required by the Agent, Imperial Bank of India, in connection with the loan proposed to be raised on behalf of the Gangad Estate. The preamble of this G.O. contains R.L.A.'s opinion No. 2633, dated 15-11-19. The secy. R.D. is of opinion that though R.L.A.'s opinions are confidential and are meant only for Government officials and servants, an exception may be made in this case, as, if the G.O. with R.L.A.'s opinion is not supplied to the bank, the loan negotiations will fall through; The R.L.A. is requested to state whether there is any objection to the Bank being supplied with his opinion; And if that is objectionable, whether there is any objection to the Bank being supplied with a copy of the G.O. without its preambl

3. As a rule, R.L.A.'s opinions are strictly confidential and are meant only for the guidance of Government Departments and Government officers. They are not therefore to be supplied to private individuals or private bodies. Even the Municipalities are informed of the purport of R.L.A.'s opinion and not the whole opinion. In this case, however R.D. desires that an exception should be made to the geferal rule. If

from the administrative point R.D. has not objection to the opinion being supplied to the Bank, R.L.A. may agree with it.

As R.D may be informded that in view of the considerations mentioned by Secy. R.D. R.L.A. agrees that an exception may be made in this case and a copy of the G.R K. with the preamble supplied to the Bank on the understanding however, that the Bank treats it as confidential.

Sd/- 10/6

Reply may be as in As.Note .

I doubt however if the Bank will agree to keep R.L.A. s opinion confidential if it intends to establish thereby that the bank made adequate inquiry as to the legal position. The inquiry is made not by the bank but by Government.

Sd/- 16/6

R.L.A. Reply as in AS's note Sd/- PNM 15/6
U.R. to R.D. No. 5414 dated 17-6-1941.

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Office of the R.L.A.

R.D. has referred these papers to R.L.A. without formulating any question on which R.L.A's opinion is required. It appears, however, that the question for consideration is whether paragraph 2 of R.L.A.'s opinion No. 170- Confl. dated 8th July 1935, requires to be modified in view of the remarks made in paragraph 5 of his letter dated 3rd August 1940 by the Hon'ble the Resident for the States of Western India (page7). R.L.A. held in the above opinion that as the land in question was part of the taluqdari estate and as the taluqdars recognised the claim of the Bhavnagar State to this land by the Consent Decree of 1932, section 31 of the Gujarat Taluqdars Act, 1888, applied as the alienation was made without the sanction of the Provincial Government. The contention of the Durbar however, is that the land did not form part of the taluqdari estate, that the Consent Decree of 1932 merely confirmed what was in possession of the Durbar in 1865 and that there was no question of any unauthorised alienation within the meaning of section 31(2) of the Gujarat Taluqdars Act, 1888.

2. The question whether the land (excluding 647 acres) did or did not form part of the taluqdari estate before 1932 is a question of fact. It appears that the land has been shown in the Settlement Register of both the original and revision surveys as belonging to the taluqdars. In 1925 and 1926 both the Collector and the Commissioner also held that the land did not belong to the Bhavnagar Durbar (See pages 9 - 17 in P.& S.D.File No. 237/34-II). For the reasons mentioned by him in his U.R. No. T.S.O.166, dated 14th May 1941, to the Commissioner, N.D. the present Collector is also of the opinion that the land in question belonged to the taluqdars and not to the Durbar. If the view taken by the above Officers is correct - and this also appears to have been the view taken so far by the Government of Bombay (see pages 67 in R.D. File No. 8771/24-III) - the alienation made by the

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Consent Decree of 1932 would be ~~xxx~~ void for want of Government sanction under section 31(2) of the Gujarat Taluqdars Act, 1888, andR.L.A.'s opinion No. 170-Confl. , dated 8th July 1935, would still held good. Attention is in this connection invited to Government of India's letter dated 26th August 1936 (pp.83-85 in P.& S.D.File No. 237/34-II).

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Remembrancer of Legal Affairs.

U.R. to R.D. No. 6435, date d the 22nd July 1941.

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It appears from section 5(a)(iv) of the Talukdars' Act that alienations are some times made subject to the condition that the alience pays the police charges. In the present case the alienation took place before the Act of 1888 came into operation; but it is not known whether the alienation was subject to the condition for payment of police charges. The fact that the alienee has so far paid the expenses in question would suggest the existence of such a condition but R.D. is requested to obtain and send information on this point together with copies of settlement registers prepared by the Survey Officer under section 5 on each occasion on which survey was made.

C/c - Idl- 19/8
Remembrancer of Legal Affairs.

U.R. to R.D.No. 7373 dated the 21st August 1941.

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Office of the R.L.A.

Under the sale certificate of 21st July 1884 the liability to pay jama and other dues in respect of the lands ~~and~~ sold was transferred to the purchaser. The words "other dues" would it appears include also talukdars liability to pay to Government police charges. The fact that the applicant has been paying his propertionate share of police charges since he came to possession of the lands also raises a presumption that his predecessors-in-title were also bearing such charges. The liability of the talukdar to pay police charges was therefore thansferred to the purchaser and his sucessors-in-title by the sale certificate of 21st July 1884. The view taken by the Collector that the applicant should continue to be held liable for the payment of the proportionate share of police charges therefore appears to be correct.

Id/- 6/12
Remembrancer of Legal Affairs.

U.R. to R.D. No. 10526 , dated the 8th December 1941.

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No.5844. F/39.
Revenue Department
Bombay Castle, 27th December 1941.

Subject'-Talukdari villages; Ahmadabad,
Ukherla and Trambak, mahal Gogho,
Payment of muchi and jividar's pay
for Government lands held by
non-talukdars in --- of,

Memorandum.

The undersigned presents compliments to the Collector and Talukdari Settlement Officer, Ahmadabad, and, with reference to the correspondence ending with his letter, No.T.S.O 534, dated 28th October 1941, is directed to forward a copy of the Remembrancer of legal Affairs" memorandum, No. 10526, dated 8th December 1941, and to state that Government accepts ahe opinion of the Remembrancer of Legal Affairs, that the applicant should continue to be held liable for the payment of the proportionate share of

police...

Police charges.

By order of the Governor of Bombay,

Assistant Secretary to the Government of Bombay,
Revenue Department.

Accompaniment.-Copy of the Remembrancer of Legal Affairs' memorandum.

Copies forwards for information to --

the commissioner.N.D. (with reference to the endorsement, o.T.S.O. 142-11, dated 28th June 1941.)

the Remembrancer of Legal Affairs,

the Home Department.

" with a copy of the Remembrancer of Legal Affairs' memorandum.

subd.for information
file with R.L.A.No.10526/41.

for
19/5/56

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25th April 1956.